

AMENDED IN ASSEMBLY JUNE 25, 1997

AMENDED IN SENATE MAY 5, 1997

SENATE BILL

No. 573

Introduced by Senator Johnson

February 24, 1997

An act to amend Sections 1 and 2 of Chapter 74 of, *and to add Section 2.5 to*, the Statutes of 1978, relating to tide and submerged lands in the City of Newport Beach.

LEGISLATIVE COUNSEL'S DIGEST

SB 573, as amended, Johnson. City of Newport Beach: tide and submerged lands.

Existing law grants in trust to the City of Newport Beach all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay, as described, subject to specified conditions.

The legislative grant requires the city to establish *a separate tidelands trust fund or separate tidelands trust funds as may be approved by the State Lands Commission and requires the city to deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tide and submerged lands, including a city tideland capital fund*, into which revenues from ~~specified lots~~ *Parcels A, B, and C, as described*, are required to be deposited, to be available only for the acquisition of real property that will further the purposes of the trust ~~and only with the approval of the State Lands Commission.~~

Existing law creates the Land Bank Fund in the State Treasury, which is appropriated to the commission for the management and improvement of public trust lands. The legislative grant requires a specified percentage of lease revenue from Parcel D, as described, to be deposited in that fund.

This bill would ~~instead~~ revise the legislative grant to require the city to establish a Tideland Capital Fund, a Tideland Operation and Maintenance Fund, and an Upper Newport Bay Restoration Fund. The bill would require that 80% of ~~those~~ the revenues from Parcels A, B, and C be deposited in the city tideland capital fund and would authorize the money in that fund to be expended for capital improvements.

~~The bill would require the city to establish a city tideland operation and maintenance fund and an Upper Newport Beach environmental restoration and improvement fund~~ Tideland Capital Fund and in the Tideland Operation and Maintenance Fund, allocated as determined by the city, and would require 10% of those revenues to be deposited in ~~each of those funds~~ the Upper Newport Bay Restoration Fund and 10% in the Land Bank Fund. The bill would prescribe the uses for which the money in ~~those~~ the funds could be expended.

The bill would authorize the city to transfer, subject to commission approval, city-owned real property not subject to the public trust to the trust created pursuant to the legislative grant, and to compensate its general fund for any such transfer, as specified.

The bill would require the city, by ~~January 1, 1999~~ December 31, 1998, to dedicate as public trust lands to be held subject to the public trust ~~created by~~ and the provisions of the legislative grant, any lands that the commission has determined have equal or greater value and utility to the public trust than ~~specified lands presently held in trust~~ Parcels A, B, and C and that would provide a satisfactory substitution. ~~The bill would also authorize the city to transfer nontrust city-owned real property to the public trust, as prescribed.~~

The bill would make related changes in the legislative grant.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1 of Chapter 74 of the Statutes of
2 1978 is amended to read:

3 Section 1. There is hereby granted to the City of
4 Newport Beach and its successors all of the right, title, and
5 interest of the State of California held by the state by
6 virtue of its sovereignty in and to all that portion of the
7 tidelands and submerged lands, whether filled or unfilled,
8 bordering upon and under the Pacific Ocean or Newport
9 Bay in the County of Orange, which were within the
10 corporate limits of the City of Newport Beach, a
11 municipal corporation, on July 25, 1919; the same to be
12 forever held by the city and its successors in trust for the
13 uses and purposes and upon the following express
14 conditions:

15 (a) The lands shall be used by the city and its
16 successors for purposes in which there is a general
17 statewide interest, as follows:

18 (1) For the establishment, improvement, and conduct
19 of a public harbor; and for the construction, maintenance,
20 and operation thereon of wharves, docks, piers, slips,
21 quays, ways, and streets, and other utilities, structures,
22 and appliances necessary or convenient for the
23 promotion or accommodation of commerce and
24 navigation.

25 (2) For the establishment, improvement, and conduct
26 of public bathing beaches, public marinas, public aquatic
27 playgrounds, and similar recreational facilities open to
28 the general public; and for the construction,
29 reconstruction, repair, maintenance, and operation of all
30 works, buildings, facilities, utilities, structures, and
31 appliances incidental, necessary, or convenient for the
32 promotion and accommodation of any such uses.

33 (3) For the preservation, maintenance, and
34 enhancement of the lands in their natural state and the
35 reestablishment of the natural state of the lands so that
36 they may serve as ecological units for scientific study, as
37 open space, and as environments which provide food and



1 habitat for birds and marine life, and which favorably
2 affect the scenery and climate of the area.

3 (b) Except as otherwise provided in this section, the
4 city or its successors shall not, at any time, grant, convey,
5 give, or alienate the lands, or any part thereof, to any
6 individual, firm, public or private entity, or corporation
7 for any purposes whatever; except that the city or its
8 successors may grant franchises thereon for a period not
9 exceeding 50 years for wharves and other public uses and
10 purposes and may lease the lands, or any part thereof, for
11 terms not exceeding 50 years for purposes consistent with
12 the trust upon which the lands are held by the state and
13 with the uses specified in this section.

14 (c) The lands shall be improved without expense to
15 the state; provided, however, that nothing contained in
16 this act shall preclude expenditures for the development
17 of the lands for the purposes authorized by this act, by the
18 state, or any board, agency, or commission thereof, or
19 expenditures by the city of any funds received for such
20 purpose from the state or any board, agency, or
21 commission thereof.

22 (d) In the management, conduct, operation, and
23 control of the lands or any improvements, betterments,
24 or structures thereon, the city or its successors shall make
25 no discrimination in rates, tolls, or charges for any use or
26 service in connection therewith.

27 (e) The state shall have the right to use without charge
28 any transportation, landing, or storage improvements,
29 betterments, or structures constructed upon the lands for
30 any vessel or other watercraft or railroad owned or
31 operated by the state.

32 (f) There is hereby reserved to the people of the state
33 the right to fish in the waters on the lands with the right
34 of convenient access to the waters over the lands for such
35 purpose, which rights shall be subject, however, to such
36 rules and regulations as are necessary for the
37 accomplishment of the purposes specified in subdivision
38 (a).

39 (g) Notwithstanding any provision of this section to
40 the contrary, the city may lease the lots located within



1 Parcels A, B, and C described in Section 6 of this act for
2 the purposes set forth in this ~~section~~ *act* and for terms not
3 to exceed 50 years. The consideration to be received by
4 the city for such leases shall be the fair market rental
5 value of such lots as finished subdivided lots with streets
6 constructed and all utilities installed. The form of such
7 leases and the range of consideration to be received by
8 the city shall be approved by the State Lands Commission
9 prior to the issuance of any such lease. All money received
10 by the city from existing and future leases of those lots
11 shall be deposited in the city tideland trust funds as
12 provided in Section 2.

13 (h) With the approval of the State Lands Commission,
14 the city may transfer portions of the lands granted by this
15 act, or held pursuant to this act, to the state acting by and
16 through the State Lands Commission, for lease to the
17 Department of Fish and Game for an ecological reserve
18 or wildlife refuge, or both, and other compatible uses to
19 be undertaken by the department; provided, however,
20 that, if at any time the Department of Fish and Game no
21 longer uses those portions of the lands so transferred by
22 the city to the state for those purposes, the lands so
23 transferred shall revert to the city to be held pursuant to
24 the provisions of this act. Upon approving such a transfer
25 from the city to the state, the State Lands Commission
26 shall lease the lands so transferred to the Department of
27 Fish and Game. The public benefits shall be the sole
28 consideration to be received by the State Lands
29 Commission from the Department of Fish and Game for
30 that lease. Any and all income received by the
31 Department of Fish and Game from the lands so leased
32 shall be used only in connection with the department's
33 improvement and administration of the leased lands.

34 (i) The city shall establish a separate tidelands trust
35 fund or funds in such a manner as may be approved by the
36 State Lands Commission, and the city shall deposit in the
37 fund or funds all money received directly from, or
38 indirectly attributable to, the granted tidelands in the
39 city.

1 (j) In accordance with this act, the city, acting either
2 alone or jointly with another local or state agency, may
3 use revenues accruing from or out of the use of the
4 granted tidelands or from any additional trust assets, for
5 any or all of the purposes set forth in this act on public
6 trust lands within the City of Newport Beach. Those
7 revenues may be deposited in one or more reserve funds
8 for use in accordance with the terms and conditions set
9 forth in this act.

10 (k) As to the accumulation and expenditure of
11 revenues for any single capital improvement on the
12 public trust lands within the city involving an amount in
13 excess of two hundred fifty thousand dollars (\$250,000) in
14 the aggregate, the city shall file with the State Lands
15 Commission a detailed description of such capital
16 improvement not less than ~~90~~ 30 days prior to the time of
17 any disbursement therefor or in connection therewith.
18 ~~Within 90 days from the date of the filing, The executive~~
19 ~~officer of the commission shall notify the city within 30~~
20 ~~days from the date of the filing, if the proposed~~
21 ~~expenditure raises significant issues. Upon receipt of the~~
22 ~~notification, the city shall not make any disbursement in~~
23 ~~connection with the proposed expenditure for 60 days or~~
24 ~~until the commission has acted on the proposed~~
25 ~~expenditure, whichever is the shorter period. Within 60~~
26 ~~days of the notification by the executive officer, the State~~
27 ~~Lands Commission may determine and notify the city~~
28 ~~that the capital improvement is not in the statewide~~
29 ~~interest and benefit or is not authorized by the provisions~~
30 ~~of subdivision (j). The State Lands Commission may~~
31 ~~request the opinion of the Attorney General on the~~
32 ~~matter; and, if it does so, a copy of the opinion shall be~~
33 ~~delivered to the city with the notice of its determination.~~
34 If the State Lands Commission notifies the city that the
35 capital improvement is not authorized, the city shall not
36 disburse any revenue for or in connection with the capital
37 improvement unless and until it is determined to be
38 authorized by a final order or judgment of a court of
39 competent jurisdiction. The city is authorized to bring
40 suit against the state for the purpose of securing such an

1 order or adjudication, which suit shall have priority over
2 all other civil matters. Service of process shall be made
3 upon the Executive Officer of the State Lands
4 Commission and the Attorney General, and the Attorney
5 General shall defend the state in such suit. If judgment be
6 given against the state in the suit, no costs shall be
7 recovered against it.

8 (l) On June 30, 1978, and on June 30 of every third fiscal
9 year thereafter, that portion of the city tideland trust
10 revenues in excess of two hundred fifty thousand dollars
11 (\$250,000) remaining after deducting current and
12 accrued operating costs and expenditures directly related
13 to the operation or maintenance of tideland trust
14 activities shall be deemed excess revenues. However, any
15 funds deposited in a reserve fund for future capital
16 expenditures or any funds used to retire bond issues for
17 the improvement or operation of the granted lands shall
18 not be deemed excess revenue. Capital improvements of
19 the granted lands for purposes authorized by this act,
20 including improvements on lands transferred to the state
21 pursuant to subdivision (h) and paid for by the city, may
22 be considered as expenditures for the purpose of
23 determining excess revenues; provided, however, that if
24 made after the effective date of this act they may be so
25 considered only if made in accordance with subdivision
26 (k). The excess revenue, as determined pursuant to this
27 subdivision, shall be allocated as follows: 85 percent shall
28 be transmitted to the Treasurer for deposit in the General
29 Fund in the State Treasury, and 15 percent shall be
30 retained by the city for deposit in the trust fund for use
31 in any purpose authorized by subdivision (j) of this
32 section.

33 (m) At the request of the city, the State Lands
34 Commission shall grant an extension of time, not to
35 exceed ~~30~~ 90 calendar days, for filing any report or
36 statement required by this act, ~~which~~ *that* was not filed
37 due to mistake or inadvertence.

38 (n) If the city fails or refuse to file with the State Lands
39 Commission any report, statement, or document
40 required by any provision of this act, or any extension

1 period granted pursuant to this act, or fails or refuses to
2 carry out the terms of this act, the Attorney General shall,
3 upon the request of the State Lands Commission, bring
4 such judicial proceedings for correction and enforcement
5 as are appropriate and shall act to protect any
6 improvements to, or assets situated upon, the granted
7 lands or diverted therefrom. The State Lands
8 Commission shall notify the Chief Clerk of the Assembly
9 and the Secretary of the Senate within 30 days from the
10 date of the occurrence of the failure or refusal and of
11 actions taken as a result thereof.

12 (o) The State Lands Commission shall, from time to
13 time, recommend to the Legislature such amendments as
14 it may determine to be necessary in the terms and
15 conditions of this act.

16 (p) The State Lands Commission shall, from time to
17 time, institute a formal inquiry to determine that the
18 terms and conditions of this act, and amendments
19 thereto, have been complied with in good faith.

20 (q) On or before December 31 of each year, the State
21 Lands Commission shall report to the Chief Clerk of the
22 Assembly and to the Secretary of the Senate the full
23 details of any transaction or condition reported to the
24 commission pursuant to this act which it determines to be
25 in probable conflict with this act or with any other
26 provision of law. Upon request by resolution of either
27 house of the Legislature, or upon formal request of the
28 State Lands Commission made only after a noticed public
29 hearing at which the city has been given an opportunity
30 to express fully any disagreement with the commission's
31 findings or to describe any extenuating circumstances
32 causing the violation, the Attorney General shall bring an
33 action in the Superior Court in the County of Orange to
34 declare that the grant under which the city holds the
35 tidelands and submerged lands is revoked for gross and
36 willful violation of this act or any other provision of law
37 or to compel compliance with the requirements of this act
38 and any other provision of law.

39 (r) The city shall cause to be made and filed annually
40 with the State Lands Commission a detailed statement of

1 receipts and expenditures by it of all rents, revenues,
2 issues, and profits in any manner arising after the
3 effective date of this act from the granted lands or any
4 improvements, betterments, or structures thereon.

5 (s) The Department of Fish and Game shall establish
6 the funds and make the deposits required by subdivision
7 (i) of this section and shall prepare and file statements
8 required by subdivision (r) as to any lands transferred to
9 the state pursuant to subdivision (h).

10 (t) The provisions of Chapter 2 (commencing with
11 Section 6701) of Part 2 of Division 6 of the Public
12 Resources Code shall be applicable to this section. The
13 provisions of Section 6359 of the Public Resources Code
14 shall not be applicable to this section.

15 (u) Notwithstanding any other provision of this act,
16 the city shall pay to the state all revenues received from
17 the production of oil, gas, and other minerals derived
18 from or attributable to the real property described in
19 Section 6 of this act and the real property acquired by the
20 city pursuant to subdivision (a) of Section 2 of this act.
21 Whenever practicable, the city shall obtain the mineral
22 rights in real property acquired pursuant to subdivision
23 (a) of Section 2 of this act.

24 SEC. 2. Section 2 of Chapter 74 of the Statutes of 1978
25 is amended to read:

26 Sec. 2. (a) ~~(1) The City of Newport Beach shall~~
27 ~~establish a city tideland capital fund as one of the funds~~
28 *establish a Tideland Capital Fund as one of the funds*
29 *required by subdivision (i) of Section 1 of this act. The*
30 *money in the Tideland Capital Fund shall be used by the*
31 *city in conformity with the following terms and*
32 *conditions:*

33 (1) *Expenditures from the fund may be made for the*
34 *acquisition of real property that will further the purposes*
35 *of the trust created by this act or for capital*
36 *improvements for those purposes.*

37 (2) *The city may make acquisitions of real property by*
38 *purchase, gift, or other conveyance, including, but not*
39 *limited to, the transfer of city-owned property held in a*
40 *municipal capacity to the trust created by this act. All*

1 *such real property shall be held by the city in trust*
2 *pursuant to this act.*

3 *(3) For purposes of this subdivision, acquisition or*
4 *improvement of real property by the city for purposes of*
5 *enhancing the public trust lands administered by the*
6 *Department of Fish and Game pursuant to Chapter 415*
7 *of the Statutes of 1975 shall be deemed to be authorized*
8 *by, and to be in furtherance of, the trust created by this*
9 *act.*

10 *(4) The city may expend municipal funds to acquire*
11 *real property for purposes specified in this subdivision.*
12 *The city may transfer amounts from the Tideland Capital*
13 *Fund to reimburse municipal funds for any such*
14 *expenditures, together with an appropriate amount of*
15 *interest on the municipal funds advanced, if the State*
16 *Lands Commission gives advance approval of the*
17 *transaction.*

18 *(b) The city shall establish a Tideland Operation and*
19 *Maintenance Fund as one of the funds required by*
20 *subdivision (i) of Section 1 of this act. The money in the*
21 *Tideland Operation and Maintenance Fund shall be used*
22 *by the city for the operation and maintenance of the tide*
23 *and submerged lands granted by this act and any*
24 *additional lands and assets that are made subject to the*
25 *public trust pursuant to this act in furtherance of the*
26 *purposes of the trust created by this act.*

27 *(c) The city shall establish an Upper Newport Bay*
28 *Restoration Fund as one of the funds required by*
29 *subdivision (i) of Section 1 of this act. The money in the*
30 *Upper Newport Bay Restoration Fund shall be used by*
31 *the city for Upper Newport Bay environmental*
32 *restoration and improvement on tide and submerged*
33 *lands described in paragraph (3) of subdivision (a) or*
34 *otherwise made subject to the public trust pursuant to*
35 *this act and located in Upper Newport Bay, to do both of*
36 *the following:*

37 *(1) Construct improvements to, or otherwise*
38 *physically alter, those public trust lands if the*
39 *construction or alteration directly benefits those lands.*



1 (2) *Fund environmental documents, planning studies,*
2 *or scientific analyses, or experiments directly related to*
3 *the improvement or enhancement of the habitat values*
4 *of those lands and the water quality of the overlying*
5 *waters.*

6 (d) (1) *Eighty percent of the money received by the*
7 *city pursuant to subdivision (g) of Section 1 of this act*
8 *shall be deposited in the Tideland Capital Fund described*
9 *in subdivision (a) and in the Tideland Operation and*
10 *Maintenance Fund described in subdivision (b), the*
11 *allocation between those funds to be determined by the*
12 *city.*

13 (2) *Ten percent of the money received by the city*
14 *pursuant to subdivision (g) of Section 1 of this act shall be*
15 *deposited in the Upper Newport Bay Restoration Fund*
16 *described in subdivision (c).*

17 (3) *Ten percent of the money received by the city*
18 *pursuant to subdivision (g) of Section 1 of this act shall be*
19 *deposited in the Land Bank Fund created in the State*
20 *Treasury pursuant to Section 8610 of the Public Resources*
21 *Code, available for expenditure by the State Lands*
22 *Commission as described in subparagraph (B) of*
23 *paragraph (1) of subdivision (f) of Section 4.5 of this act.*

24 (4) *The city may deposit in the city funds established*
25 *pursuant to subdivisions (a), (b), and (c) any other*
26 *income from the tide and submerged lands granted to the*
27 *city pursuant to this act or from lands otherwise held in*
28 *the public trust pursuant to this act that the city*
29 *determines to be appropriate and consistent with this act*
30 *and the public trust.*

31 SEC. 3. *Section 2.5 is added to Chapter 74 of the*
32 *Statutes of 1978, to read:*

33 Sec. 2.5. (a) *The city may transfer to the trust created*
34 *by this act, any city-owned real property not subject to*
35 *the public trust for the purposes specified in Section 1 of*
36 *this act. The city may compensate the city general fund*
37 *for the fair market value of the transferred real property*
38 *if the transfer and that expenditure of trust funds occur*
39 *after January 1, 1998, and the State Lands Commission has*
40 *given advance approval of the transaction.*

(b) On or before December 31, 1998, the city shall dedicate as public trust lands, to be held subject to the public trust and the provisions of this act, any lands that the State Lands Commission has determined (1) have equal or greater value and utility to the public trust than the lands described as Parcels A, B, and C in Section 6 of this act and (2) that the dedication of lands as trust lands will provide satisfactory substitution for the requirements prescribed in subdivision (a) of Section 2 of this act as enacted by Chapter 74 of the Statutes of 1978. Upon a demonstration of necessity, the executive officer of the State Lands Commission may extend that deadline to not later than December 31, 1999.

~~required by subdivision (i) of Section 1 of this act. Eighty percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the city tideland capital fund.~~

~~(2) All money in the city tideland capital fund shall be used by the city in conformity with the following terms and conditions:~~

~~(A) Expenditures from the city tideland capital fund may be made for the acquisition of real property that will further the purposes of the public trust created by this act or for capital improvements for those purposes.~~

~~(B) The city may make acquisitions of real property by purchase, gift, or other conveyance, including, but not limited to, the transfer of city-owned property held in a municipal capacity to the trust created by this act. All such real property shall be held by the city in trust pursuant to this act.~~

~~(C) For purposes of this subdivision, acquisitions or improvements of real property by the city for purposes of enhancing the public trust lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975 shall be deemed to be authorized by, and to be in furtherance of, the purposes of the public trust created by this act.~~

~~(3) The city may expend municipal funds to acquire real property for purposes specified in this subdivision. The city may transfer amounts from the city tideland~~

1 capital fund to reimburse municipal funds for any such
2 expenditures, together with an appropriate amount of
3 interest on the municipal funds advanced, if the
4 expenditures of municipal funds are made after April 7,
5 1978, and the State Lands Commission gives advance
6 approval of the transaction.

7 (b) The city shall establish a city tideland operation
8 and maintenance fund as one of the funds required by
9 subdivision (i) of Section 1 of this act. Ten percent of the
10 money received by the city pursuant to subdivision (g)
11 of Section 1 of this act shall be deposited in this fund. All
12 money in that fund shall be used by the city for the
13 operation and maintenance of the tide and submerged
14 lands granted by this act and any additional lands and
15 assets made subject to the public trust pursuant to this act
16 that will further the purposes of the public trust.

17 (c) The city shall establish an Upper Newport Beach
18 environmental restoration and improvement fund as one
19 of the funds required by subdivision (i) of Section 1 of this
20 act. Ten percent of the money received by the city
21 pursuant to subdivision (g) of Section 1 of this act shall be
22 deposited in this fund. The money in that fund shall be
23 used by the city for Upper Newport Beach environmental
24 restoration and improvement on tide and submerged
25 lands granted by this act or otherwise made subject to the
26 public trust pursuant to this act, including lands described
27 in paragraph (2) of subdivision (a), to do both of the
28 following:

29 (1) Construct improvements to, or otherwise
30 physically alter, those lands if the construction or
31 alteration directly benefits those lands.

32 (2) Fund environmental documents, planning studies,
33 and scientific analyses or experiments that are directly
34 related to the improvement or enhancement of the
35 habitat values of those lands and the water quality of
36 overlying waters.

37 (d) The city may deposit in the city tidelands funds
38 established pursuant to subdivisions (a), (b), and (c) such
39 other income from the tide and submerged lands granted
40 to the city by this act or from lands otherwise held in trust

1 pursuant to this act as the city determines to be
2 appropriate, consistent with this act and the public trust.

3 (e) The city may transfer to the public trust created by
4 this act nontrust city owned real property for purposes
5 specified in Section 1. The city may transfer those city
6 lands to the public trust and compensate its general fund
7 for the fair market value of the lands from the city
8 tideland capital fund if that transfer of land and those
9 expenditures of trust funds are made after January 1, 1998,
10 and the State Lands Commission gives advance approval
11 of the transaction.

12 (f) On or before January 1, 1999, the city shall dedicate
13 as public trust lands, to be held subject to the public trust
14 created by this act, lands that the State Lands
15 Commission has determined (1) have equal or greater
16 value and utility to the public trust than the lands
17 described as Parcels A, B, and C in Section 6 of this act and
18 (2), their dedication as trust lands will provide
19 satisfactory substitution for purposes of this act. Upon
20 demonstration of necessity, the executive officer of the
21 State Lands Commission may extend the January 1, 1999,
22 deadline to not later than January 1, 2000.

